IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3520 OF 2006

UT Worldwide India Pvt.Ltd. Applicant
versus
The State of Maharashtra & anr. Respondents

CRIMINAL APPLICATION NO.3521 OF 2006

UT Worldwide India Pvt.Ltd. Applicant
versus
The State of Maharashtra & anr. Respondents

CRIMINAL APPLICATION NO.3522 OF 2006

UT Worldwide India Pvt.Ltd. Applicant
versus
The State of Maharashtra & anr. Respondents

CRIMINAL APPLICATION NO.3523 OF 2006

UT Worldwide India Pvt.Ltd. Applicant
versus
The State of Maharashtra & anr. Respondents

CRIMINAL APPLICATION NO.3524 OF 2006

UT Worldwide India Pvt.Ltd. Applicant
versus
The State of Maharashtra & anr. Respondents

Shri M.s.Mohite, adv. for applicants.
Shri P.A.Pol, APP for State.
Shri S.R.Chitnis, Sr.Counsel with Rishi Bhuta for respondent no.2 in all petitions.

CORAM : S.C.DHARMADHIKARI, J.

DATE OF RESERVING THE JUDGEMENT : 13.10.2006

DATE OF PRONOUNCING THE JUDGEMENT : 13.11.2006

PC :

1. All these criminal applications are for cancellation of bail which has been granted by the Metropolitan Magistrate, Railway Mobile 'Court, Andheri vide order dated 20th September 2006. These orders were passed upon applications made by respondent no.2-accused invoking the jurisdiction of learned Metropolitan Magistrate under section 437(6) of the Code of Criminal Procedure.

2. Very few facts are necessary to appreciate the rival contentions.

3. Respondent no.2 accused in each of these applications are arrested on the complaint of the applicant-original complainant, by Andheri Police Station, in CR No.52 of 2006.

4. The alleged offences are exclusively triable by the learned Metropolitan Magistrate. It is also not in dispute that each of these accused had applied earlier for regular bail which applications were either rejected by the learned Sessions Judge or this Court. Some of them came to be withdrawn.

5. It is further not in dispute that the accused

had applied for bail by invoking section 437(6) of Code of Criminal Procedure on the basis that charge in this case was framed on 29th June 2006. Sixty days have elapsed from the said date. On 13th July 2006 prosecution applied u/s 173(8) of Cr.P.C. and upon conclusion of the further investigation, filed documents. The applications made by the accused setting out above facts and invoking the aforesaid power, were rejected by the Metropolitan Magistrate by a reasoned order.

6. Once again, on 1st September 2006, applications for bail were filed by the accused invoking identical powers and on this occasion their applications have been allowed by the order dated 20th September 2006.

7. The learned Metropolitan Magistrate is of the view that the trial is not concluded within sixty days from the date of framing the charge, and, therefore, the accused are entitled to the benefit of section 437(6) of Cr.P.C.. The applications for bail were allowed with this reasoning. The learned Judge also imposed conditions upon the accused apart from furnishing surety bonds.

8. It is this order of the learned Metropolitan Magistrate which is impugned and the bail granted thereunder should be cancelled, is the request of the original complainant.

9. Shri Mohite appearing for the original complainant-applicant before me has invited my attention to Section 437(6) of Cr.P.C. and has submitted that the said provision does not mandate release merely because the trial is not concluded within a period of sixty days. That apart, according to Shri Mohite, the learned Judge has misread this provision. He has misinterpreted the same. The period of sixty days according to the learned counsel has to be computed "from the first date fixed for taking evidence in the case". The learned counsel further submits that the said period cannot be calculated or computed from the date of framing of charge. That is not the intention of the Legislature. Therefore, the applications preferred by the accused were not maintainable.

10. That apart, the same learned Judge had rejected their applications for bail which were filed invoking identical provision. That order is delivered by the Metropolitan Magistrate on

1st September 2006. As to what prompted the learned Metropolitan Magistrate to pass an order in favour of the accused immediately after twenty days, is not clear from the reading of the order. Shri Mohite submits that while placing reliance on the judgement of Madhya Pradesh High Court and judgements referred to therein, the Metropolitan Magistrate has failed to take into consideration the provisions of sub section 6 of section 437 and other decisions holding the field. In his submission, the order of learned Judge is grossly illegal, vitiated by total non application of mind and wholly perverse. He submits that the charge in this case is extremely serious. The accused while in the employment of the applicants have floated bogus companies. They opened bank accounts and thereafter committed a fraud to the extent of Rs.2.00 crores. The amount is huge. It is in such circumstances that the charge has been framed. The offences alleged are grave and serious. They are punishable with rigorous imprisonments in law. Therefore, the learned Judge should not have entertained the application.

11. Shri Mohite submits that even otherwise the matter before the Trial Court was placed on 13th

July 2006 for evidence. On 13th July 2006 two accused engaged lawyers. The trial was adjourned to 9th August 2006. The accused could not be produced before the Court on 9th August 2006. Two more accused engaged lawyers on that date. The matter was adjourned on 23rd August 2006. The prosecution took time and filed additional charge sheet on 1st September 2006. He submits that on 1st September 2006 itself the applications for bail were rejected. Therefore, it is not as if the period of sixty days from the date fixed for evidence is over. In fact, before the said date the applications were filed and were entertained and allowed. For all these reasons the impugned orders deserve to be quashed and set aside.

12. Shri Mohite has relied upon following decisions :-

(i) 1995(2)-Crimes-622 (Chhabi vs. State of Orissa);

(ii) 1987-Cri.L.J.-55 (Robert Lendi vs. The Collector of Customs and anr.);

(iii) 2000(9)-SCC-383 (Mahesh Kumar Bhawsinghka Vs. State of Delhi);

(iv) 2005(2)-SCC-42 (Kalyan Chandra Sarkar Vs. Rajesh Ranjan & anr.);

(v) 2001-All MR (Cri)-1210 (Puran vs. Rambilas and another):

(vi) 2000-Cri.L.J.-2645 (Chand Khan Vs. State).

13. On the other hand, Shri Chitnis - learned senior counsel appearing for the original accused has supported the order. He submits that the learned Metropolitan Magistrate was fully justified in exercising his powers u/s 437(6) to enlarge the applicants before him on bail in the facts and circumstances of this case. He submits that the ambit and scope of the powers conferred upon the Court u/s 437(6) can safely be equated with the benefit that is made available to an accused if the prosecution fails to file a charge sheet within the period stipulated by law. He invites my attention to Section 167 of the Cr.P.C. and more particularly sub section 2 thereof. Shri Chitnis submits that once there can be no denial of a right of the accused because of failure of filing charge sheet by the prosecution, then the same mandate should be read into section 437(6) of Cr.P.C.. So read, it is immaterial whether the case fixed for evidence could not be concluded for no fault of the prosecution. He submits that a right accrues in favour of the applicant to apply and for the Trial Judge to enlarge him on bail, if within the

period stipulated by section 437(6) of the Cr.P.C., the trial is not concluded. Shri Chitnis has relied upon (i) 2000-Cri.L.J.-2644 (Ram Kumar @ Raj Kumar Rathore Vs. State of M.P.) and (ii) 1992-SCC (Cri)-870 (Aslam Babalal Desai Vs. State of Maharashtra).

14. Apart from this, Shri Chitnis raised a preliminary objection to maintainability of this application by contending that the learned Metropolitan Magistrate's order enlarging the accused on bail, could not have been challenged in this Court straight away. He has invited my attention to Section 439(2) of Cr.P.C.. He also invitedmy attention to the decisions of Supreme Court laying down the principle that no application for cancellation of bail should be allowed or granted as a matter of course. He submits that there is a difference between an order granting bail and an order to be passed upon an application seeking it's cancellation. Bail once granted should not be cancelled mechanically. Strong circumstances and very cogent and reliable material has to be placed before the Court to demonstrate that the accused has misused his liberty and then alone the application can be considered. He submits that

the application presented by the applicants before this Court, should be rejected only on the ground that it is not maintainable and in any event does not set out reasons seeking cancellation of bail.

15. Shri Randive appearing for one of the accused adopted the submissions of Shri Chitnis and has invited my attention to the application preferred for releasing the applicants on bail. He submits that second bail application was maintainable and could not have been rejected on any principles muchless res judicata. He, therefore, submits that the impugned order is in accordance with law and should not be set aside.

16. For proper appreciation of the rival contentions, a reference can usefully be made to section 437 of the Cr.P.C. which reads thus:-

> "S.437. When bail may be taken in case of non-bailable offence-
>
> (1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an offer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -
>
> (i) such person shall not be so released if there appear

reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognisable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witness during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise on bail and gives an undertaking that he shall comply with such direction as may be given by the Court.

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub section without giving an opportunity of hearing to the Public Prosecutor.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be,

that there are not reasonable grounds for believing that the accused has committed a non bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, XVI or Chapter XVII of the Indian Penal Code (45 of 1860), or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub section (1), the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.

(4) An officer or a Court releasing any person on bail under sub section (1) or sub section (2) shall record in writing his or its reasons or special reasons for so doing.

> (5) Any Court which has released a person on bail under sub section (1) or sub section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.
>
> (6) If, in any case triable by a Magistrate, the trial of a person accused of any non bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
>
> (7) If, at any time after the conclusion of the trial of a person accused of a non bailable offence and before judgement is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

17. A bare perusal of Section 437 would reveal that the Court other than the Court of Sessions or High Court is empowered to enlarge the person accused of or suspected of commission of any non bailable offence after his arrest and production before said Court. Sub section 1 of section 437 has three provisos. Therefore, in appropriate case and for justifiable reasons the Court other than the Court of Sessions and the High Court, can release the applicant-accused on bail. It is

a discretion vested in the Court which has to be exercised on sound judicial principles. The power can be exercised even during the course of investigation, inquiry or trial. The Code provides that while enlarging the applicants who are accused of offence punishable with imprisonment for the period provided by sub-section 3 of section 437 or other offences more specifically set out therein, the Court in its discretion can impose conditions as stipulated therein, if necessary. The discretion has to be exercised after reasons are recorded for so exercising the same. Sub section 5 of Section 437 empowers the Court to cancel the bail and direct arrest of the accused and once again said discretion has to be exercised judiciously.

18. It is thus clear that the provisions carve out a discretionary power to enlarge the accused on bail and order his release by imposing conditions. Therefore, sub section 6 of Section 437 also will have to be read accordingly. It is not possible for me to accede to the submissions of Shri Chitnis that there is any mandate flowing from the power to enlarge the accused on bail, if the trial is not concluded within a period of sixty days from the first date fixed for taking

evidence. Merely because the word "shall" appears in sub section 6, it is not possible to hold that there is a mandate to release the accused on bail in all cases mechanically. A well settled principle of interpretation is that a section or parts of it or even sub sections or parts of sub section have to be taken into consideration while interpreting the same. No word or part can be left out or read in isolation. Therefore, even if the word "shall" appears in section 437(6), the power to enlarge the applicant on bail may not be exercised in favour of the accused if the Magistrate is of an opinion that it is a fit case not to do so, for reasons to be recorded in writing. If Shri Chitnis's submissions are to be accepted, I will have to ignore the words "unless .... otherwise directs" which are clearly appearing in section 437(6). When the entire power conferred u/s 437 is discretionary, then it cannot be said by any stretch of imagination that a mandate flows u/s 437(6) to enlarge the applicant on bail merely because trial could not be concluded within a period of sixty days from the first date fixed for taking the evidence of the accused. Of course, the accused is given a right to apply for bail if the trial is not concluded but the Court

still has a discretion not to grant bail. The discretion is to be exercised judiciously, and on sound principles by taking into consideration facts of each case. If the discretion is not to be exercised in favour of the accused, reasons have to be assigned for not so exercising the same. In some cases, it might become relevant to see as to whether accused was responsible for such delay, as nobody can be allowed to take advantage of his own wrong.

19. In my view, for the reasons to be recorded in writing, the Magistrate can direct that even if the trial is not concluded within the period stipulated in section 437(6) the person who is in custody, is not entitled to be released on bail. It is not necessary to go into this aspect any further. It is not for me to make any comment upon the reasons that would be necessary for denying bail on this ground. Everything depends upon the facts and circumstances of each case and no general rule can be laid down in this behalf. The necessity to record reasons acts as a safeguard. The liberty of an individual cannot be interfered with unless there are strong reasons compelling such interference. It would be open for the applicant-accused to challenge

the order passed by learned Metropolitan Magistrate in case he is not released on bail on the grounds stipulated in section 437(6) and while challenging that order he can highlight the inadequacy or insufficiency of reasons. Nothing prevents the applicant-accused to invoke the power conferred on a higher Court to enlarge such applicant- accused on bail independently as well. There are remedies available to the aggrieved accused and it is not as if the provision being not construed as mandatory defeats the right to apply for bail u/s 437(6) of Cr.P.C.. Once I am of the opinion that the provision is not mandatory, or will apply in each and every case depending upon peculiar facts therein, then, there is no question of reading into it any vested or indefeasible right of the nature conferred by Section 167(2) proviso of Cr.P.C..

20. The proviso to section 167(2) operates in a distinct situation. There a mandate flows in terms of the said proviso. The moment the person who is detained applies for bail on the grounds mentioned in the said proviso, there is a mandate to release him on bail, if he is prepared to and does furnish bail. Section 437(6) operates at a distinct and subsequent stage. That is a

discretion conferred on the Court while trying a person accused of any non bailable offence to release him on bail thereunder. Once the provisions are read together and harmoneously and in the above context, then there cannot be any confusion about the nature of relief and benefit conferred on the applicant-accused.

21. For the above reasons, it is not possible to accede to the submissions of Shri Chitnis that this provision is mandatory. For identical reasons, it is not possible to apply the ruling of Supreme Court relied upon by Shri Chitnis. The Hon’ble Supreme Court was considering a case where the bail granted under proviso to sub section 2 of section 167 was cancelled merely because the Challan (Charge Sheet) had been filed subsequently. It is in that context that the observations in paras 9 to 11 have been made by the Hon’ble Supreme Court.

22. While it is true that the Supreme Court has also discussed the ambit and scope of the power to cancel bail which is conferred by section 437(5) and section 439(2) of Cr.P.C.. But I find nothing in those observations which would run contrary to the interpretation placed by me on

section 437(6) of the Cr.P.C..

23. The other judgement relied upon by learned Metropolitan Magistrate and Shri Chitnis before me namely that of the Madhya Pradesh High Court is rendered firstly in the peculiar facts of that case. In that case the trial was not concluded despite sixty days having elapsed from the first date fixed for evidence. Secondly, despite such period having elapsed the application for bail was rejected by the learned Magistrate and it appears that no reasons were assigned for the same. Thirdly, the Madhya Pradesh High Court was exercising powers u/s 482 of the Cr.P.C.. The order under challenge was passed by the Additional Sessions Judge, Gwalior, who confirmed the order of Magistrate and dismissed the revision application before him.

24. The learned Single Judge of Madhya Pradesh High Court, therefore, was called upon to decide whether there is an abuse of the process of the Court and the orders could be said to be erroneous and illegal. It would not be fair to read the observations in para 5 of this judgement in isolation. The learned Judge has faulted the approach of the Courts below and the reasoning

given for not allowing the application u/s 437(6). Therefore, the use of word "mandatory" by him in the earlier part of his judgement, does not mean that an opinion was expressed that the provisions are mandatory. So read, it is not a judgement which would support the case of respondent no.2-accused before me.

25. On the other hand, the judgements relied upon by Shri Mohite would clearly go to show that an over all view has to be taken. The Court is not prohibited from considering the nature of allegations while dealing with a case under sub section 6 of section 437 of Cr.P.C.. That is a view expressed by a learned Single Judge of Orissa High Court (Hon'ble Shri Justice Pasayat, as His Lordship then was). A Division Bench of the Delhi High Court in the judgement reported in 1987-Cri.L.J.-55 (Robert Lendi Vs. The Collector of Customs & another) has, with respect, summed up the legal position correctly. This is what is observed in paras 19 to 21 :-

> "19. This brings us back to sub sec.(6) of Sec.437. The object of sub sec.(6) of S.437 is that if the trial of non bailable offences in the court of Magistrate is not concluded within sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of

the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

20. The expression "from the first date fixed for taking evidence in the case", cannot be read in isolation of the expression "if the trial of a person accused of any non bailable offence is not concluded within a period of sixty days". Both these expressions have to be read together and in harmony. A plain reading of the provision would clearly go to show that the period of sixty days will start from the date fixed for taking evidence in the case in which the accused has been charged and has pleaded not guilty to the charge, and has asked for being tried. In other words the time spent on recording the pre charge evidence which is usually recorded in complaint cases before the charge is framed, will not be counted for purposes of sub sec.(6) of S.437 Cr.P.C. In our view, therefore, Mr.Mehta's line of reasoning is not correct and it does not commend to us.

21. The next question that arises for consideration is whether while refusing bail under sub sec.(6) of S.437 of the Code the Magistrate can only refuse bail on the limited reasoning germane to the cause of delay and whether the bail can be refused on the general grounds recognised as good for refusal to grant bail. Undoubtedly, the object of sub sec.(6) of S.437 of the Code is to eradicate delay in trial. To us, it appears that it is equally important that the ends of justice do not suffer. The procedural laws are essentially meant to safeguard the interest of justice. The twin objects namely to eradicate the delay in trial and to achieve the ends of justice are necessarily to be harmonized. It is in that context one has to find out whether the discretion exercised by the Magistrate in withholding bail after sixty days, has been properly and judicially exercised. We find nothing in

> the provision to support the assertion of Mr.Mehta that the reasons for declining the bail under this provision should be only those which are germane to the cause of delay. There is no reason to give such a restricted meaning to the provision. The expression used in the provision is "unless for reasons to be recorded in writing, the Magistrate otherwise directs". A plain reading of the expression shows that the Legislature has put no fetters on the powers of the Magistrate that under this provision bail can only be refused for reasons germane to the cause of delay. If that were so, the Legislature would have certainly made it clear. To us it appears that the considerations for refusing bail under this provision can be the reasons which are generally invoked and understood in law the grounds for refusing bail. All that is required of the Magistrate is that should be decided to decline to grant bail, he must record his reasons in writing. There are no fetters placed on the exercise of this discretion."

26. Learned Single Judge of this Court (V.P.Tipnis, J. as His Lordship then was) was considering identical contentions in a case reported in 1988(2)-Crimes-581 (B.S.Rawat Asstt. Collector of Customs Vs. Andre C. Mydlarz). His Lordship’s attention was invited to the judgement of Division Bench of Delhi High Court and the observations reproduced above. After referring to them the learned Single Judge observes thus :-

> "14. Smt.Agarwal also relied on sub-section (6) of section 437 and contended that as the trial in the present case is

> not concluded within the period of 60 days from the first date fixed for taking evidence in the case, such person shall be released on bail. In this behalf, Shri Gupte cited a decision of the Delhi High Court in Robert Lendt v. Collector of Customs. In the said case, the Division Bench of the Delhi High Court has held that the expression "the first date fixed for taking evidence in the case" in section 437(6) would mean the first date fixed for recording evidence after the accused is charge-sheeted and the prosecution is given notice of that date for recording its evidence and, therefore, the period of sixty days under section 437(6) will start from that date. The time spent in recording the pre-charge evidence which is usually recorded in complaint cases before the charge is framed will not be counted for purposes of section 437(6), the Division Bench added. I am in respectful agreement with the aforesaid decision and, therefore, it is not possible to accept the submission of Smt.Agarwal that the respondent No.2 is entitled to be released on that count."

Thus, the judgement of Division Bench of Delhi High Court has been followed by this Court. Since I am in respectful agreement with the views of Delhi High Court and that of the learned single Judge reproduced above, I am unable to accede to the submissions of Shri Chitnis made as they are by relying upon the judgement of learned Single Judge of Madhya Pradesh High Court. Assuming that Section 437(6) has been construed as mandatory by the learned Single Judge of Madhya Pradesh High Court, I would prefer the views of Delhi High Court as also our own High

Court.

27. I am not impressed by the other contention including the one canvassed during the course of the preliminary objection. None can dispute the power conferred upon this Court to cancel bail u/s 439(2). That the applicant should have approached the Sessions Court is hardly of any relevance once the power to cancel bail is conferred concurrently on this Court as well.

28. Similarly, the power to cancel the bail can be exercised if the order enlarging the accused on bail is palpably illegal, perverse and vitiated by total non application of mind. An arbitrary and wrong exercise of discretion by the Trial Court can always be corrected (See 2001-All Mah.Reporter (Criminal)-1210) (Puran Vs. Rambilas and another).

29. Coming to the merits of this case, I am of the view that the learned Judge had rejected the application which was invoking identical power on 1st September 2006. In this behalf, it would be fruitful to quote the earlier order dated 1st September 2006 verbatim. The same reads thus:-

"Order :-

Perused application, reply. Heard Adv. Gandhi for accused 1,2, 3 and ld. A.P.P. for State.

Ld. Adv. Gandhi prays for bail relying on 437(6) saying that trial is not concluded in 60 days from date of trial.

Charge was framed on 29/6/2006. 60 days have lapsed as early as on 1.9.2006. On 13.7.2006 prosecution made application u/s 173(8) for additional evidence. Today, they have filed documents. copies are given to accused.; Today advocates for accused 1,2,3,5,6 are present. Till last date it was found that accused no.3 and 4 are not represented by any advocate. Today sister of accused no.4 is present and submitted that adv. Gheewala represents accused no.4. So in the real sense, today is the first date. When all accused are said to be represented by counsel and I can go on with the evidence.

It was also submitted that some times accused are not produced from the jail. All are in custody. It is also submitted on behalf of State that today and earlier also complainant was present.

Looking to the 42 number of witnesses and file of documents it will not be practically possible to finish the evidence so early. Hon'ble Sessions Court rejected bail application many a times. Hon'ble High Court did not consider it.

Considering entire things releasing accused on bail u/s 437(6) would be hyper technicality. 437(6) is not right under 167(2). So application is rejected."

30. There is considerable merit in the contention of Shri Mohite that what compelled or prompted the learned Metropolitan Magistrate to

grant the application within twenty days of the earlier order of rejection is not at all clear. I have perused the application for bail preferred by the applicants on 1st September 2006. Both applications raised identical pleas namely that the charge is framed on 29th June 2006 and the application be granted because the date of evidence was fixed on 13th July 2006 and sixty days have elapsed therefrom. In my view, the period of sixty days has to be computed as per Section 437(6) of Cr.P.C. i.e. from the first date fixed for recording evidence. Thus, it would expire not on 1st September 2006 but 12th September 2006. Be that as it may, when the earlier application was rejected by assigning reasons and which order was not challenged by the accused, it was not proper for the learned Judge to have entertained a second application on identical grounds within a very short period. The learned Metropolitan Magistrate should have been aware of the rejection of successive applications for bail by the Sessions Court and this Court on merits. He could not have brushed aside the reasons assigned by him in his earlier order. His subsequent order does not make any reference to the earlier order so also the reasoning. The subsequent order does not, apart

from setting out that the period of 60 days is over and the judgement of the learned Single Judge of the Madhya Pradesh High Court being brought to his notice, indicate subsequent developments or changed circumstances. The learned Metropolitan Magistrate has grossly erred in considering the successive application on identical ground without any change in the circumstances before him. As has been observed by the Hon'ble supreme Court that exercise of discretion, if wholly arbitrary and palpably illegal can be interfered with and then the order releasing the accused on bail can be cancelled.

31. Therefore, the orders enlarging the respondent no.2 in each of these applications on bail are patently unsustainable. This Court would be failing in its duty if it does not interfere and cancel the bail once the above opinion is recorded.

32. In the result, each of these applications are allowed. The orders enlarging the applicants on bail are quashed and set aside. The applicants be taken into custody. However, this order does not prevent the applicants from invoking the powers of Trial Court u/s 437(6) or

otherwise at a subsequent stage. Such application, if preferred, be considered on its own merits and in accordance with law laid down in this decision.

(S.C.DHARMADHIKARI, J.)

33. At this stage the learned advocate appearing for the respondent no.2 in each of these matters prays that the accused may be given some time to surrender. At the request of the learned advocate one week’s time is granted to the accused to surrender to the custody of the concerned Court.

(S.C.DHARMADHIKARI, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3520 OF 2006
WITH
CRIMINAL APPLICATION NO.3521 OF 2006
WITH
CRIMINAL APPLICATION NO.3522 OF 2006
WITH
CRIMINAL APPLICATION NO.3523 OF 2006
WITH
CRIMINAL APPLICATION NO.3524 OF 2006

DATE OF DECISION : 6th November 2006

FOR APPROVAL AND SIGNATURE OF :

THE HON'BLE SHRI JUSTICE S.C.DHARMADHIKARI :-

1. Whether Reporters of Local papers may be allowed to see the judgement:

2. To be referred to the Reporters or not ?

3. Whether Their Lordships wish to see the fair copy of judgement ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad and Goa Offices ?